

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHARLES L. CECIL, <i>Pro Se</i> ,)	Case No.: 1:10 CV 389
)	
Petitioner)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
RICH GANSHEIMER, WARDEN,)	
)	
Respondent)	<u>ORDER</u>

On February 22, 2010, Petitioner Charles L. Cecil (“Cecil” or “Petitioner”) filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (“Petition,” ECF No. 1), challenging the constitutionality of his state conviction for one count of robbery. Cecil argues that his Petition should be granted based on the following grounds: (1) Petitioner’s Indictment failed to provide him notice of the offense charged, in violation of his due process rights; (2) Petitioner’s guilty plea was invalid because he was not notified of an essential element of the crime charged; (3) the trial court lacked subject matter jurisdiction over Petitioner’s guilty plea, in violation of the Fifth, Sixth, and Fourteenth Amendments; and (4) Petitioner’s trial counsel was ineffective, in violation of the Sixth and Fourteenth Amendments. (*See* Petition at pp. 4-5.) On June 16, 2010, Petitioner amended his Petition to include a fifth ground for relief: “Petitioner was denied of his Constitutional rights under the 5th, 6th, and 14th Amendment[s] to the United States Constitution, warranting an order of expungment [sic] of record of state conviction.” (Pet.’s First Am. and Supp. Relief, ECF No. 10.)

On direct appeal, Petitioner argued that his counsel was ineffective and his Indictment was fatally defective. The Eleventh District Court of Appeals for Lake County affirmed his conviction. Petitioner filed a *pro se* Motion for Re-Hearing, which the appellate court constructed to be an application for reconsideration. The court denied the Motion. Petitioner appealed to the Supreme Court of Ohio, this time arguing that he received ineffective assistance of counsel, which resulted in his plea being invalid, the Indictment was defective, and “[the decision of the The [sic] Lake County Court of Appeals is contrary to the Federal and State precedents.” (Exhibit State Record, ECF No. 11-2, at p. 219.) The Ohio Supreme Court denied review.

This court referred the case to Magistrate Judge David S. Perelman for preparation of a report and recommendation. On July 19, 2010, Respondent Rich Gansheimer (“Respondent”) filed a Return of Writ.

On September 30, 2010, Magistrate Judge Perelman submitted his Report and Recommendation (ECF No. 12), recommending that the Petition be dismissed. First, he found that grounds one, two, three, and five, which all challenge the adequacy of the Indictment, did not state cognizable federal habeas corpus claims. Magistrate Judge Perelman found that the alleged deficiencies with the Indictment did not rise to the level of a denial of fundamental fairness.

Second, Magistrate Judge Perelman found that the ineffective assistance of counsel claim, ground four, could not succeed in light of the finding that the underlying challenges to the Indictment were not cognizable in habeas corpus. He also found that even when the merits of the claim were considered, the claim failed because “the state appellate court’s conclusion that petitioner had not provided adequate evidence of ineffective assistance of counsel did not amount to an objectively unreasonable application of the rule of *Strickland* [*v. Washington*, 466 U.S. 668 (1984)]

to the facts of this case, nor was it an unreasonable determination of the facts in light of the evidence presented.” (Report and Recommendation, ECF No. 12, at p. 12.) Because he found that Petitioner did not present a claim that a constitutional violation occurred, Magistrate Perelman recommended that the Petitioned be dismissed.

Objections to the Report and Recommendation were due by October 14, 2010. As of the date of this Order, Petitioner has not objected to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge’s recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

The court finds that, after *de novo* review of the Report and Recommendation and all other relevant documents, the Magistrate Judge’s conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge’s Report and Recommendation. (ECF No. 12.) Cecil’s Petition is hereby denied, and final judgment is entered in favor of the Respondent. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
CHIEF JUDGE
UNITED STATES DISTRICT COURT

January 31, 2011